

A. The Commission is Authorized Only to Establish a Set of Customer Service Standards That the Local Franchising Authority May Then Adopt and Enforce

The Act sets up a two-step process for the adoption of customer service standards. First, the Commission is required to establish customer service standards, including standards governing cable system office hours and telephone availability, installations and service calls, and communications (including bills) between the operator and subscriber.²⁵ The Act, however, does not contain any kind of self-executing provisions, e.g., it does not require all cable operators to comply with those standards within a certain period of adoption.²⁶ Rather, the Act adds a second step in which it permits the franchising authority to adopt the Commission standards and then enforce them. Section 8(a) of the Act provides that a "franchising authority may establish and enforce . . . customer service requirements of the cable operator." Act at 8(a)(1) (emphasis added).

25 The Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385., § 8, 106 Stat. 1460, 1484 (1992) (to be codified as amended at 47 U.S.C. § 552) (hereinafter "Act").

26 In contrast, the recently enacted Telephone Consumer Protection Act of 1991 ("TCPA"), Pub. L. No. 102-243, 105 Stat. 2394 (1991), which regulates telemarketing, does contain self-executing provisions, providing that the requirements of the TCPA "shall take effect one year after the date of enactment"

In short, nothing in Section 8 of the Act supports the conclusion that the FCC's customer service standards are self-executing or that the Commission has any power either to force franchise authorities to adopt them or to enforce them directly against cable operators. Rather, the FCC's authority is clear, but limited: to assist the franchise authorities by establishing a set of standards that the local franchising authority may, in its discretion, adopt and enforce.²⁷

In short, while the Act added a new requirement that the FCC adopt customer service standards, it did not intend to usurp the franchising authority's ultimate (and traditional) responsibility over customer service standards.²⁸ Indeed, given the vast diversity of communities and the complexity of cable systems that serve them, as well as the fact that many communities already have preexisting customer service standards in place, it would be both inappropriate and inefficient to require that the FCC's

27 To this end, the FCC's standards either should not be "codified" as FCC rules or it should be made clear, in prefatory language, that "the following standards may be adopted and enforced by local franchise authorities"

28 Allowing for local control over customer service standards is consistent with the local regulation of customer service standards for telephone utilities. For example, the Maryland Public Service Commission regulates the billing information telephone companies must provide to their customers, as well as the staffing and hours of operation of the telephone companies' business offices. See MD. Regs. Code tit. 20, §§ 20.45.04.01, 20.45.04.02 (1990).

guidelines would become the law without any action on the part of the local franchising authority. The Commission previously has recognized the crucial role that the local franchising authority should play in setting customer service standards:

[B]ecause we believe that the local franchising authority is the best arbiter of the particular customer service requirements of its community, promulgation of such standards is best left to those local authorities. . . . This leaves parties free to negotiate nontechnical safeguards which account for conditions specific to the local community.²⁹

As the Commission correctly notes in its NPRM, the Act does not provide any guidance on precisely what action the local franchising authority must take in order to adopt the FCC's customer service standards.³⁰ Continental agrees with the Commission's suggestion that the local franchising authority should be required, at a minimum, to provide notice to the cable operators that it has adopted the standards. The notice should be in writing and should explicitly state what effect the federal standards will have on any existing service requirements, either those in the franchise agreement or those that may be applicable through

29 In the Matter of Competition, Rate Regulation and the Commission's Policies Relating to the Provision of Cable Television Service, Report, MM Docket No. 89-600, 5 FCC Rcd. 4962, 5060 (1990).

30 NPRM at ¶ 4.

any general state or local consumer protection law. Once the local franchising authority has adopted the standards, it can enforce those standards pursuant to the terms of the franchise agreement.³¹

Finally, the Commission also seeks comment on what role, if any, it should play once the standards are set.³² As discussed above, the customer service provisions of the Act are not self-executing; the local franchise must adopt them as standards before they can be enforced against a cable operator. It would make no sense, therefore, for the Commission to grant "waivers" of the locally adopted and enforced customer service standards. And nothing in the Act provides the Commission with such authority. To the extent, however, that questions are raised about how to interpret the standards, the Commission, as the primary author of those standards, can play an important role in interpreting the standards when (and if) questions arise. Continental thus urges the Commission to grant petitions for interpretive rulings requested by either the cable operator or the franchising authority. Final enforcement authority must remain, however, with the local franchising authority.

31 In the NPRM, the Commission seeks comment on whether the franchising authority has the power to assess fines for violations of the standards. See NPRM at n.19. Nothing in the Act gives the franchising authority this power.

32 See NPRM at ¶ 7.

**B. The Local Franchising Authority Must
Obtain the Consent of the Cable Operator
to Adopt Standards Stricter Than Those
Established by the Commission**

While the local franchise authorities under the Act arguably can unilaterally adopt the FCC's standards without the consent of the cable operator, the franchise authorities can adopt more stringent standards only if they obtain the consent of the cable operator. Under Section 8(c)(2) of the Act, Congress specifically provided that "[n]othing in this section shall be construed to preclude a franchising authority and a cable operator from agreeing to customer service requirements that exceed the standards established by the Commission" Act at 8(c)(1). In order to discern the precise meaning of this section, it must be read in conjunction with Section 8(a), which gives the franchising authority power to "establish and enforce" standards. It is a fundamental principle of statutory interpretation that a statute should be interpreted in a way that each provision of the statute has a purpose.³³ When sections (a) and (c)(2) are read together, therefore, it is

³³ Sutherland Stat. Const. § 46.06 (5th Ed. 1992) ("It is an elementary rule of construction that effect must be given, if possible, to every word, clause and sentence of a statute.' A statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous") See also *id.* at § 46.05, stating that "each part or section [of a statute] should be construed in connection with every other part or section so as to produce a harmonious whole."

apparent that while the franchising authority has the power to adopt and enforce customer service standards, it can unilaterally adopt such standards (without the consent of the cable operator) only if the standards are no stricter than those established by the FCC.³⁴

Section (c)(2) specifically requires the consent of the cable operator to adopt stricter customer service standards. Nothing in the Act, however, precludes franchise authorities from adopting standards that are less strict than the federal standards. Because ultimate responsibility for establishing and enforcing customer service standards remains a local issue, allowing localities to consider other unique needs and resources of their communities is appropriate.³⁵ If those needs and resources dictate a concern for stricter standards, however, the Act

34 This interpretation of the statute is also compelled by constitutional analysis of the state's ability to impair its existing contractual obligations. Article I, Section 10 of the U.S. Constitution commands that "[n]o state shall pass . . . any . . . Law impairing the Obligation of Contracts" U.S. Const. Art. I, §10, cl. 1. See United States Trust Co. of New York v. New Jersey, 431 U.S. 1 (1977) (holding that the repeal of a covenant between New York and New Jersey that limited the Port Authority's ability to subsidize rail travel from revenues pledged as security for consolidated bonds impaired the contracts between the Port Authority and the bondholders). To the extent that the franchising authority attempts to impose standards more stringent than the FCC standards, it would appear to be acting in its role as contractor, and not as regulator, and thus must obtain the consent of the cable operator.

35 See NPRM at n.9; supra at Section I.B.

specifically provides that the cable operators' consent must be obtained.

**C. State and Local Authorities Retain the
Power to Adopt Consumer Protection Laws
That Impose Stricter Requirements Only if
They are Laws of General Applicability**

Finally, Section 8 of the Act makes clear that states or local authorities retain their authority to enact any "consumer protection law, to the extent not specifically preempted by this title." Act at 8(c)(1). Those consumer laws may be enforced even if they impose customer service standards that exceed those set by the FCC for cable.³⁶ Act at 8(c)(2).

The Commission correctly notes that any such consumer laws must be laws of general applicability. NPRM ¶ 5. The provisions of Section 8(c)(2) apply to consumer laws; nowhere is cable mentioned in this provision with respect to the customer service standards, nor are local cable franchising authorities mentioned with respect to enforcement. That is because Congress was speaking of

³⁶ An example of such a requirement is found in a California state law that requires all customer service appointments (hence including but not limited to cable) to be provided in four-hour windows. Cal. Civ. Code § 1722 (West 1993). If the FCC were to adopt the NCTA's standards, cable operators would be required to provide morning, afternoon or all-day appointments. Nonetheless, in California a cable operator (like a telephone company or an installer or repairperson of any product or service) would be required to offer appointment windows of no longer duration than four hours.

consumer laws of general applicability -- just as when it adopted virtually the identical provision in 1984. The legislative history to the 1984 Act made this requirement of general applicability clear, explaining:

A state or franchising authority may not, for instance, regulate the rates for cable service in violation of section 8 . . . and attempt to justify such regulation as a "consumer protection" measure.

H.R. Rep. No. 934, 98th Cong., 2d Sess., pt. IV, at 79 (1984).

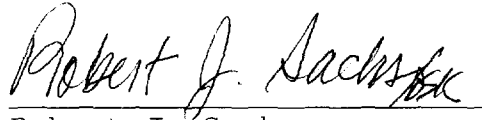
CONCLUSION

For the reasons stated herein, Continental urges the Commission, as it adopts a set of standards that local franchising authorities may adopt and enforce, to modify NCTA's voluntary standards to provide the greater specificity of definition and permit the flexibility of implementation that are required of mandatory standards. Otherwise, the Commission risks adopting standards that would inadvertently discourage rather than encourage cable operators' ability to meet their customers' needs in innovative ways.

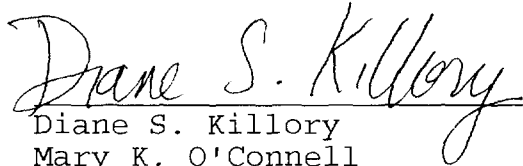
As an alternative means to assure quality customer service, Continental urges the Commission to encourage local franchising authorities and cable operators to agree on

performance standards that are tailored to the needs of
their communities.

Respectfully submitted,

A handwritten signature in cursive script, reading "Robert J. Sachs". The signature is written in dark ink and is positioned above a horizontal line.

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January 8, 1993

APPENDIX A

CONTINENTAL CABLEVISION'S PROPOSED ALTERNATE CUSTOMER SERVICE STANDARDS

Definitions:

Regular Business Hours are those hours during which most similar businesses in the community are open to serve customers or those hours during which most administrative offices in the business district or neighborhood where the cable operator's office is located are open to serve customers.

Extended Business Hours are those hours the office is open to serve customers which occur outside regular business hours, such as at night and on weekends and holidays.

These standards shall apply except during abnormal conditions, i.e., circumstances beyond the reasonable control of the cable operator where severe weather, natural disasters, civil disturbances, labor unrest and other events or circumstances may justifiably prevent the operator from fulfilling customer service obligations.

These standards shall also not apply during abnormal conditions that may be within the partial control of the cable operator so long as the cable operator has made a reasonable effort to staff for such contingencies.

These standards shall also not apply to enhanced services provided at the discretion of the operator such as toll-free lines and other specialized communications devices and services.

1. Office and Telephone Availability

A. Trained company representatives will be available during regular business hours to respond to customer telephone inquiries, as well as after hours and on holidays and weekends in response to demonstrated community needs.

B. Answering Time: Under normal conditions, systems that utilize automated answering and distribution equipment should answer calls within 30 seconds after receipt of the call, except for circumstances beyond the reasonable control of the operator.

Hold Time: Systems that have telephone equipment capable of measuring hold times (time in queue) should achieve a measured average hold time of 30 seconds or less.

This standard should be achieved, on average, for at least 90% of the calls received, as measured on an annual basis during regular business hours. Toll-free lines and other enhanced customer services are exempt from this requirement.

C. Busy Signal Standard: Under normal operating conditions, less than five percent of customer calls, measured annually, will result in a busy signal during regular business hours. Enhanced services provided at the discretion of the operator such as toll-free lines and other specialized communications devices and services are exempt from this standard.

D. Customer Service Center and Bill Payment Locations: Customer service center and bill payment locations under the direct control of the operator will under normal conditions be open for transactions during regular business hours. Additionally, based on demonstrated community needs, cable systems will schedule supplemental hours on weekdays and/or weekends during which customer service centers and bill payment locations will be open if it is cost effective and prudent to do so.

2. Installations, Outages and Service Calls

A. Under normal conditions, the operator will offer to perform 95% of requested standard installations within seven business days after an order has been placed, unless circumstances beyond the reasonable control of the operator prevent or delay the installation. The seven business day installation period may be postponed by the operator if the customer's account is in arrears or if customer cannot provide an equipment security deposit that may be required. "Standard" installations are defined as those that are above ground, and are less than 125 feet from the existing feeder distribution system located along public ways.

B. Excluding those situations beyond the reasonable control of the cable operator, under normal conditions the operator will offer to respond promptly to an all channel outage affecting all sets and in no event later than 24 hours at least 95% of such occurrences as measured annually. Excluding those situations beyond the reasonable control of the cable operator, under normal conditions the

operator will respond to other service related problems within two business days.

C. Under normal conditions, the appointment window alternatives for installations, service calls, and other installation activities will be (a) morning, (b) afternoon, or (c) all day during regular business hours. Additionally, based on demonstrated community needs, cable systems will schedule supplemental hours during which appointments can be set. If due to previous scheduling some appointment windows are not available, the operator will offer the next available appointment windows to customers on a first come, first serve basis.

D. If a scheduled installation or repair appointment cannot be kept, an attempt to contact the customer will be made and the appointment rescheduled, if necessary, at the next available appointment window that is convenient for the customer.

To achieve efficient scheduling, the operator may call the customer up to 15 minutes prior to the time of the appointment. If 15 minutes prior to the time of the appointment the customer is not present at the location where service is to be performed, the company may cancel the appointment and within 24 hours attempt to contact the customer to reschedule the appointment. Customers shall be informed of the company's policy at the time the appointment is originally scheduled.

3. Communications, Bill & Refunds

A. The cable company will provide written information in each of the following areas at the time of installation and any future time upon request:

- Products and services offered
- Prices and service options
- Installation and service policies
- How to use the cable service

Bills will be clear, concise and understandable.

Refund checks will be issued promptly, but no later than the earlier of 45 days or the customer's next billing cycle following the resolution of the request and the return of the equipment supplied by the cable company if service is terminated.

The operator will notify customers by mail or by making an announcement on the cable system a minimum of 30

days in advance of the effective date of any rate change or channel deletion or repositioning, provided the change is within the reasonable control of the cable operator. The operator may add channels at any time.